

Appl. No. 10/090,517
Atty. Docket No. 8866
Response dated 11/17/2003
Reply to Office Action of 8/27/2003
Customer No. 27752

REMARKS

The Examiner has stated that Claims 1-26 are subject to restriction and/or election requirement under 35 USC 121, and has identified the groupings as follows:

I. Group I: Claims 1-12, 14-24, and 26, drawn to a cosmetic composition, classified in class 424, subclass 401.

II. Group II: Claims 13 and 25, drawn to a method of regulating the condition of skin, classified in class 424, subclass 401.

Under MPEP § 803, election/restriction is proper when both of the following criteria are met: (1) The inventions must be independent or distinct as claimed; and (2) There must be a serious burden on the Examiner if the restriction is not required. Applicants respectfully submit that any prior art search set up for the matter of claims 1-12, 14-24 and 26 will be coextensive with any search for the matter of claims 13 and 25. Applicants respectfully submit that the examination of the present application, as a single unrestricted application, would not be unduly burdensome on the Examiner because a thorough art search of all of the identified classes and subclasses could easily be performed.

Applicants respectfully point out that non-elected claims 13 and 25 require use of the topical compositions of claims 1 and 14 and therefore cannot be "used in a materially different process of using that product". Applicants assert therefore that the restriction requirement is improper and request its withdrawal.

In view of the foregoing remarks, it is respectfully requested that the Examiner withdrawal the requirement of restriction and allow claims 1-26 to be prosecuted in the same application. Should the Examiner's restriction requirement not be withdrawn, The Applicants hereby provisionally elect, with traverse, to prosecute Species 1 as exemplified in claims 1-12, 14-24 and 26. Applicant retains the right to present claims 13 and 25 in a divisional application.

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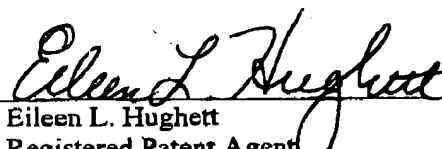
Conclusion

In light of the above remarks, it is requested that the Examiner reconsider and withdraw the restriction requirement. In view of the foregoing, Applicants respectfully request reconsideration of this application and allowance of Claims 1-26.

Respectfully submitted,

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